

S.B. Civil Misc. Appeal No.1970/2007
LRS of Gopal Singh
VS
Smt. Manju & Anr.

Date of order : 5.11.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. Harish Purohit, for the appellant.
Mr. BV Thanvi, for the respondents.

<><><>

Heard learned counsel for the parties as learned counsel for the respondent has objection for adjourning the matter in view of the fact that according to learned counsel for the respondent, the respondent no.1 plaintiff is the owner of the property in dispute and filed the suit for possession wherein notice were sent to the defendants and, thereafter, again notices were sent to the legal representatives of Gopal Singh, therefore, defendants had full knowledge of the suit. Not only this, even they have engaged the Advocate who was appearing on behalf of the appellants-defendants. It is submitted that appellant failed to show any cause for not appearing in the court, despite service after the death of their counsel. It is also submitted that the trial court dismissed the application of the appellants filed under Order 9 Rule 13 CPC by order dated 26th July, 2007, thereafter, the appellant submitted another application under Order 9 Rule 13

CPC, but that too was dismissed by the trial court. The subsequent order has not been challenged by the appellant and the respondent-plaintiff is deprived of fruits of the decree.

Learned counsel for the appellant on merits vehemently submitted that the appellant's advocate unfortunately expired and, thereafter, no notice was given to the appellant by the court and, therefore, they had no knowledge of the decree passed by the court below. They came to know about the decree when only one property dealer informed them on 15th July, 2007 that the suit was decreed in favour of the plaintiff.

I considered the submissions of learned counsel for the parties and perused the record. So far as facts of the case are concerned, it will be worthwhile to mention here that respondent no.1-plaintiff, (who is wrongly described as defendant) filed the suit against her-in-law for possession of the suit property on the basis of her title. Defendant including appellants were served upon the summons of the suit. It appears that thereafter, one of the defendant Gopal Singh died and again notices were served upon the defendants and the legal representatives of Gopal Singh – the appellants were represented by their counsel and they have not disclosed any reason for not appearing in the court

and it appears that they did not care to contact their counsel, therefore, they must not have come to know about the death of their counsel and, therefore, it appears that the trial court found no reason even for the name sake for setting aside the decree after condoning delay.

In view of the above, I do not find any illegality in the impugned order. Hence, the appeal of the appellant is dismissed having no merit.

(PRAKASH TATIA), J.

c.p.goyal/-